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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

EXAMINER

NGUYEN, TUAN M

ART UNIT PAPER NUMBER

2828

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,044

Applicant(s)

JOHNSON, RALPH H.

Examiner

Tuan M Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-59 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

1. Claims 1-59 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-44 of copending Application No. 10/026020, claims 1-6 of copending Application No. 10/026055, claims 1-34 of copending Application No. 10/026016. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

2. Claims 1, 37 and 48 of Application No. 10/026044 recite a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of GaAsSb, GaAsSbN. Further claim 48 recites an AlGaAs confinement layers sandwiching said barrier layers. The limitations in the claims of this application is basically the same as the limitation in the claim 1 of the copending application 10/026020.

Claim 1 of copending application number 10/026020 recites a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of InGaAsSb. The claims recite alternative substitution elements such as Al, In, N, Sb, with the basic material GaAs. Therefore claims 1-59 and claims 1-44 of copending Application No. 10/026020 are considered as the "same invention". Furthermore, the substituted elements are disclosed in each application specification and title of the invention. Thus, the claims are not patentable distinct from each other.

3. Claims 1, 37 and 48 of Application No. 10/026044 recite a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of GaAsSb, GaAsSbN. Further claim 48 recites an AlGaAs confinement layers sandwiching said barrier layers. The limitation in the claims of this application is basically the same as the limitation in the claims 1, 3 and 5 of the copending Application No. 10/026055.

Claim 1 of copending application number 10/026055 recites a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of InGaAs, GaAsN barrier layers and GaAsN confinement layers. The claims recite alternative substitution elements such as Al, In, N, Sb, with the basic material GaAs. Therefore claims 1-59 and claims 1-6 of copending Application No. 10/026055 are considered as the "same invention". Furthermore, the substituted elements are disclosed in each application specification and title of the invention. Thus, the claims are not patentable distinct from each other.

4. Claims 1, 37 and 48 of Application No. 10/026044 recite a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of GaAsSb, GaAsSbN.

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Further claim 48 recites an AlGaAs confinement layers sandwiching said barrier layers. The limitation in the claims of this application is basically the same as the limitation in the claims 1, 25 and 33 of the copending Application No. 10/026016.

Claim 1 of copending Application No. 10/026016 recites a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of InGaAsSbN, claim 25 recites AlGaAs confinement layers. Furthermore claim 33 recites AlGaAs barrier layers. The claims recite alternative substitution elements such as Al, In, N, Sb, with the basic material GaAs. Therefore claims 1-59 and claims 1-34 of copending Application No. 10/026016 are considered as the "same invention". Furthermore, the substituted elements are disclosed in each application specification and title of the invention. Thus, the claims are not patentable distinct from each other.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Regarding to claims 1, 37 and 48, the claims recite a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprised of GaAsSb, GaAsSbN; barrier layers sandwiching said at least one quantum well; and confinement layers sandwiching said barrier. Claim 48 further recites AlGaAs confinement layers sandwiching said barrier layers. The claims fails to provide any means, any structure and any structural relationship in order to support the VCSEL in the claims which render the claims confusing, vague and indefinite.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jewell et al (6,359,920) in view of Eglash et al (5,251,225).

With respect to claim 1, Jewell et al discloses a VCSEL comprising at least one quantum well having a depth of at least 40 meV and comprising of GaAsSb, note col. 18 line 6 to col. 32

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line 54, see figs. 2 and 11. However Jewell does not disclose a barrier layers sandwiching said at least one quantum well and confinement layers sandwiching said barrier layers. Whereas Eglash et al discloses the quantum well and barrier are sandwiching, note col. 2 line 59 to col. 4 line 36, see fig. 1. For the advantageous of quantum well diode laser, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Jewell et al with the quantum well sandwiching with barriers as taught or suggested by Eglash.

With respect to claims 2 and 8, Jewell et al discloses barrier layers comprise of GaAsP, note col. 25.

With respect to claims 3-4, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 2.

With respect to claims 5-6, Jewell et al discloses barrier layers are comprised of AlGaAs, note col. 29.

With respect to claim 7, Jewell et al discloses the quantum well comprises N, note col. 27.

With respect to claims 9-10, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 35 line 7 to col. 36 line 67, see figs. 9a and 9b.

With respect to claims 11-12, Jewell et al discloses barrier layers are comprised of AlGaAs, note col.

With respect to claims 13 and 31, Jewell et al discloses the quantum well further comprises N, note col. 26 line 60 to col. 38 line 40. However Jewell does not disclose N greater than 1%, since it has been held that discovering an optimum value of a result effect variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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With respect to claim 14, Jewell et al discloses the barrier layers are comprised GaAsP, note col. 25.

With respect to claims 15-16, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 2.

With respect to claims 17-18, Jewell et al discloses barrier layers are comprised of AlGaAs, note col. 29.

With respect to claim 19, Jewell et al discloses the quantum well thickness, see figs. 1-2b.

With respect to claim 20, Jewell et al discloses the barrier layers are comprised of GaAsP, note col. 25.

With respect to claims 21 and 22, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 2.

With respect to claims 23-24, Jewell et al discloses barrier layers are comprised of AlGaAs, note col. 29.

With respect to claim 25, Jewell et al discloses the quantum well comprises N, note col. 27.

With respect to claim 26, Jewell et al discloses the barrier layers are comprised of GaAsP, note col. 25.

With respect to claims 27-28, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 35, see figs. 9a-9b.

With respect to claims 29-30, Jewell et al discloses the barrier layers are comprised of AlGaAs, note col. 29.

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With respect to claim 32, Jewell et al discloses the barrier layers are comprised of GaAsP, note col. 25.

With respect to claims 33-34, Jewell et al discloses the confinement layers are comprised of AlGaAs, note col. 35, see figs. 9a-9b.

With respect to claims 35-36, Jewell et al discloses the barrier layers are comprised of AlGaAs, note col. 25.

9. Claims 37-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jewell et al (6,359,920) in view of Eglash et al (5,251,225) further in view of Van de Walle et al (5,383,211).

With respect to claim 37, Jewell and Eglash disclose the VCSEL comprising at least one quantum well having a depth of at least 40 meV and barrier layers sandwiching at least one quantum well and confinement layers sandwiching the barriers layers as set forth in claim 1. However Jewell and Eglash do not discloses the quantum well comprising of GaAsSbN. Whereas Van de Walle discloses the quantum well comprising GaAsSbN, note col. 6. For the advantageous of quantum well diode laser, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Jewell et al and Eglash with the quantum well comprising GaAsAbN as taught or suggested by Van de Walle et al.

With respect to claim 38, Jewell the barrier layers are comprised of GaAsP, note col. 25.

With respect to claims 39-40 and 45-46, Jewell discloses the confinement layers are comprised of AlGaAs, note col. 35, see figs 9a-9b.

With respect to claims 41-42, Jewell discloses the barrier layers comprised of AlGaAs, note col. 29.

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With respect to claim 43, Jewell et al discloses the quantum well further comprises N, note col. 26 line 60 to col. 38 line 40. However Jewell does not discloses N greater than 1%, since it has been held that discovering an optimum value of a result effect variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 44, Jewell et al discloses the barrier layers are comprised of GaAsP, note col. 25.

With respect to claim 47, Jewell et al discloses the quantum well thickness, note col. 27, see fig. 11.

With respect to claim 48, Van de Walle et al discloses the AlGaAs confinement layers sandwiching the barrier layers, note col. 4, see fig. 3.

With respect to claims 49, 52, 55 and 58, Jewell et al discloses the barrier layers are comprised of GaAsP, note col. 25.

With respect to claims 50, 53, 56 and 59, Jewell et al discloses the barrier layers are comprised of AlGaAs, note col. 29.

With respect to claims 51 and 57, Jewell et al discloses the quantum well further comprises N, note col. 26 line 60 to col. 38 line 40. However Jewell does not discloses N greater than 1%, since it has been held that discovering an optimum value of a result effect variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 54, Jewell et al discloses the quantum well thickness, note col. 27, see fig. 11.

Citation Of The Pertinent References

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patent to Botez et al (US patent 6,363,092) discloses narrow spectral width high power distributed feedback semiconductor laser.

The patent to Arakawa et al (US patent 5,757,833) discloses semiconductor laser having a transparent light emitting section and a process of producing the same.

Communication Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan M Nguyen whose telephone number is (703) 306-0247.

The examiner can normally be reached on 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-5511 for regular communications and (703) 306-5511 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3329.



Paul Ip
SPE
Art unit 2828